

**DLA PIPER LLP (US)**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

REPUBLIC METALS REFINING  
CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-13359 (SHL)

(Jointly Administered)

In re

REPUBLIC TRANS MEXICO METALS,  
S.R.L.,

Debtor.

Chapter 11

Case No. 18-13644 (SHL)

**Related to ECF Nos. [10, 54, 78, 227,  
277, 373, 395]**

**CUSTOMER STATEMENT OF FUNDACIÓN RAFAEL DONDÉ, I.A.P.  
IN ACCORDANCE WITH THE ORDER APPROVING UNIFORM  
PROCEDURES FOR RESOLUTION OF OWNERSHIP DISPUTES**

In accordance with the *Order Approving Uniform Procedures for Resolution of Ownership Disputes* [ECF No. 395] (the “Protocol”), Fundación Rafael Dondé, I.A.P. (the “Foundation”)<sup>1</sup> hereby designates the *Fundación Rafael Dondé, I.A.P.’s Limited Objection, Joinder and Reservation of Rights Regarding Debtors’ Motion for Entry of Interim and Final*

<sup>1</sup> The address of the Foundation and its telephone number are as follows: Monte de Piedad 3, colonia Centro, alcaldía de Cuauhtémoc, Ciudad de México, 06000, telephone number +52-55 5130-3100.

*Orders (I) Authorizing the Debtors' Use of Cash Collateral, (II) Granting Adequate Protection to the Secured Parties, (III) Scheduling a Final Hearing and (IV) Granting Related Relief* [ECF No. 227] and the *Declaration of Eduardo Dondé de Teresa* attached thereto as Exhibit A (together, the "Objection") as its Customer Statement, as supplemented herein.<sup>2</sup>

### **CUSTOMER STATEMENT**

1. The Foundation incorporates the Objection as if fully set forth herein.

2. This Customer Statement pertains to the Foundation's assets (the "Assets") that have been misappropriated by the Debtors:

- a. 7,363.07 ounces of the Foundation's gold were transferred to RTMM between July 2, 2018 and October 30, 2018, as described in detail on Appendix 1 attached hereto (the "FRD Gold");
- b. 2,341.82 ounces of contained silver were transferred to RTMM between July 2, 2018 and October 30, 2018, as described in detail on Appendix 1 attached hereto (the "FRD Silver"); and
- c. an aggregate of MEX\$ 75,520,712.40 (or USD\$ 3,757,476.02, the "Sale Proceeds") obtained by RTMM on behalf of the Foundation following the sale of the Foundation's bars of fine gold and silver. The Foundation has learned that the Sale Proceeds belonging to the Foundation were paid to the Debtors in two installments: (i) MEX\$ 34,592,943.04 on October 30, 2018, and (ii) MEX\$ 40,927,769.36 on November 1, 2018. Historically, sale proceeds are usually remitted to the Foundation within three (3) business days. To date, RTMM has continued to retain the Sale Proceeds.
  - i. The Foundation intends to seek discovery regarding the location of the Sale Proceeds, which should be held in a segregated account since they are not property of the Debtors' estates.

3. **Claims Against the Debtors.** The Foundation currently holds a number of claims against RTMM and its affiliated Debtors, which may include claims against each of their officers, directors, agents, employees, representatives, lenders and other legally responsible parties. These claims include:

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<sup>2</sup> Capitalized terms used but not defined in this statement have the meaning ascribed to such terms in the Objection.

- a. criminal claims under the Mexican Federal Criminal Code (*Código Penal Federal*), the Criminal Code for the Federal District (*Código Penal para el Distrito Federal (currently, Ciudad de México)*) and other relevant laws, as applicable, against RTMM, its affiliated Debtors, and their respective representatives, including but not limited to Joseph Liberman and Jason Rubin. Such criminal claims include, but are not limited to:
  - i. conversion (*abuso de confianza*) against RTMM and its affiliated Debtors for illegally disposing of the FRD Gold and FRD Silver;
  - ii. conversion (*abuso de confianza*) against RTMM and its affiliated Debtors for illegally retaining the Sale Proceeds; and
  - iii. unjust enrichment (*fraude*) against RTMM and its affiliated Debtors for being unjustly enriched as a result of the conversion of the Foundation's Assets.
- b. non-bankruptcy claims:
  - i. claims against RTMM for breach of that certain Service Agreement between RTMM and the Foundation, dated as of April 18, 2016 (the "Service Agreement") for:
    - 1) transferring the Foundation's non-monetary Assets from RTMM's facility in Mexico City to the U.S. without the Foundation's authorization or consent (express or implied);
    - 2) selling any or all of the Foundation's non-monetary Assets without the Foundation's authorization or consent (express or implied); and
    - 3) failure to return the Foundation's Assets or all of the proceeds thereof (minus the 1.15% service fee on gold sales and 5% service fee on silver sales pursuant to the Service Agreement).
  - ii. imposition of constructive trust on the Assets (or proceeds thereof).
- c. bankruptcy claims:
  - i. administrative expense claims to the extent any Debtor received any of the Foundation's Assets within 20 days prior to the applicable petition date pursuant to section 503(b)(9) of the Bankruptcy Code;
  - ii. administrative expense claims to the extent any Debtor received any of the Foundation's Assets after the applicable petition date pursuant to section 503(b)(1) of the Bankruptcy Code.

**4. Summary of the Basis for the Ownership Dispute.**

- a. Throughout the parties' course of dealing for the past four years, the Foundation engaged RTMM to melt the Foundation's gold and silver, and further, to sell it on its behalf on the date indicated by the Foundation. The Service Agreement, by its terms, provides that RTMM is to perform smelting services and removal of stones and further sale for a fee; namely 1.15% for gold and 3% for silver. Furthermore, the Service Agreement provides that RTMM "will assign an area of 35m<sup>2</sup><sup>3</sup> exclusively for the Foundation for the receipt, audit, valuation of *its* valuables collected for processing (smelting)." See Section VIII(a) of Service Agreement (emphasis added).
- b. Upon the Foundation's delivery of the gold and silver to RTMM to be melted, a *carta de porte* (a bill of lading) is issued by a safe transportation company (usually, *Servicio Panamericano de Protección*) ("SPP") sent by RTMM. The bill of lading indicates the metals to be received by RTMM for melting or for sale, as applicable. Once RTMM is in possession of such metals, RTMM issues (i) a receipt indicating the kind and quantity of metals owned by the Foundation that were delivered by SPP, and (ii) a *format de lote* (a form of lot), following a laboratory analysis, confirming the quantity and quality of the Foundation's metals received by RTMM.
- c. If, and only if, the Foundation decides to sell its gold and silver, it will, in each instance, provide express written authorization via e-mail for RTMM to conduct such sale on the Foundation's behalf at an agreed upon purchase price to third parties and the applicable exchange rate for the consideration to be wire transferred to the Foundation. In addition, for each sale, the Foundation and RTMM will enter into a *Confirmación del Contrato de Fijación del Precio del Metal* (a written confirmation) confirming the terms of the specific sale transaction. The Foundation customarily would receive the sale proceeds from RTMM within three (3) business days after such sale.
- d. RTMM has acknowledged that the gold and silver it received from the Foundation continues to belong to the Foundation. See, e.g., *Order Approving RTMM Product Settlement With Fundación Rafael Dondé, I.A.P.* [ECF No. 398] (the "FRD Order") ("WHEREAS, [RTMM] . . . is currently holding at its bank vault in Mexico approximately \$3 million of segregated and identifiable Product (as defined in the Motion) that belongs to [the Foundation]").

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<sup>3</sup> This denotes an area of approximately 376.7 square feet within the RTMM premises for exclusive storage of FRD's smelted metals.

- e. Unlike the gold and silver which was the subject of the FRD Order, the Foundation's Assets that are the subject of this Customer Statement were illegally and without authorization transferred from RTMM's facility in Mexico City to the United States (7,363.07 ounces of FRD Gold and 2,341.82 ounces of FRD Silver). RTMM's unilateral and illegal actions do not deprive the Foundation of title and ownership to its property.
- f. The Foundation owns the Assets because (i) the Foundation never agreed to sell those Assets to RTMM or any of the Debtors, and (ii) RTMM and the Debtors never agreed to purchase the Assets from the Foundation.

**5. Governing Law.** Mexican law governs this ownership dispute. The Service Agreement was entered into in Mexico between the Foundation and RTMM, both of which are Mexican entities, and the parties' course of dealings were always within Mexico. The Service Agreement is governed by the United Mexican States Federal Commerce Code (Código de Comercio), United Mexican States Federal Civil Code (Código Civil Federal) and, if either statute is silent on a particular issue, the provisions of the Civil Code for Mexico City (Código Civil para la Ciudad de México) (formerly Civil Code for the Federal District), will govern, as applicable.

**6. Additional Information.** The Foundation has the right, and is prepared, to immediately file a criminal complaint in Mexico pursuant to applicable Mexican law to commence a criminal proceeding against RTMM, its affiliated Debtors, and their respective representatives, including but not limited to Joseph Liberman and Jason Rubin, with respect to the misappropriation of the Foundation's Assets (as defined in paragraph 2 hereof).

*[Remainder of page left intentionally blank.]*

7. The Foundation reserves all of its rights, including but not limited to amending or supplementing this Customer Statement to assert any claims the Foundation may have to the extent the Bankruptcy Court concludes that U.S. law applies to the instant ownership dispute.

Dated: New York, New York  
January 18, 2018

**DLA PIPER LLP (US)**

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**APPENDIX 1**

REPUBLIC IDENTIFICATION LOT NUMBER	REFINED GOLD OUNCES	LAB ADJUST	FINAL REFINED GOLD OUNCES	REFINED SILVER OUNCES CONTAINED
ML014111	361.572		361.572	105.067
ML014112	328.726		328.726	90.984
ML014171	232.406		232.406	67.653
ML014172	242.593		242.593	59.437
ML014173	262.733		262.733	53.637
ML014174	249.747		249.747	59.097
ML014175	233.486		233.486	63.764
ML014176	243.227		243.227	62.910
ML014177	251.282		251.282	57.961
ML014178	254.799		254.799	52.828
ML014179	189.008		189.008	44.647
ML014180	194.683		194.683	43.595
N/A		37.419	37.419	384.275
ML014425	242.418	6.737	249.155	74.017
ML014426	209.611	6.461	216.072	89.681
ML014427	278.186	7.381	285.567	75.185
ML014428	237.284	5.989	243.273	66.350
ML014429	238.769	6.758	245.527	70.309
ML014430	241.927	6.176	248.103	62.671
ML014431	251.361	6.564	257.925	57.512
ML014432	240.309	6.704	247.013	77.098
ML014441	247.214	6.711	253.925	70.881
ML014442	264.217	7.402	271.619	71.158
ML014443	236.146	5.369	241.515	66.561
ML014444	266.162	6.598	272.760	68.500
ML014445	252.121	6.696	258.817	68.623
ML014446	221.558	6.322	227.880	83.842
ML014447	238.476	5.846	244.322	70.647
ML014448	239.260	6.487	245.747	60.741
ML014449	265.467	6.706	272.173	62.189
		<b>TOTAL</b>	<b>7,363.07</b>	<b>2,341.82</b>